UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26

FEDERAL MOGUL,
Employer,
and Case 26-RC-8066
UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner.

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[1] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]
3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section (9)(c)(1) and Section 2(6) and (7) of the Act for the reasons explained herein. [3]

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **February 26, 1999.** Any party may waive its right to request review by signing the attached Waiver form and submitting it to the Board in Washington with a copy to the Regional Director.

DATED February 12, 1999, at Memphis, TN.

/S/ Gerard P. Fleischut

Gerard P. Fleischut, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
tel: 901-544-0018

Attachment

1. The Employer has filed a brief which has been duly considered.

2. The parties stipulated that the Employer is a corporation with headquarters in Southfield, Michigan and that its operations include a Friction Product Group which has a facility at LaVergne, Tennessee. During the past 12 months, a representative period of time, the Employer has purchased and received goods and materials at that facility valued in excess of $50,000 and during the same period it shipped from that facility goods and products valued in excess of $50,000.

3. The only issue in this proceeding concerns the Employer's contention that the LaVergne, Tennessee plant, the only facility at issue herein, will close at the end of June 1999. David Braysher, Director of Operations for the Employer's Friction North American Products, made a recommendation to close the LaVergne facility at an operations meeting on about November 10, 1998. According to Braysher, the directors accepted his recommendation. There are no minutes of the November operations meetings. Nor are there any other documents to indicate that Braysher's recommendation were adopted by the directors.

Braysher began the evaluation process concerning the LaVergne plant closure around June or July 1998. This evaluation was made prior to Braysher's knowledge of any union activity. As far as Braysher is concerned, the decision to close the plant by the end of June 1999 is definite.

The Employer's sole documentary evidence consisted of a one-page document prepared by Braysher and presented to the directors at the operations meeting in November. The document lists 14 of the Employer's facilities, five of which (including LaVergne) are noted for closure under the column titled "Proposed Federal Mogul Direction." Concerning this document, Braysher testified that it showed where the Employer "wanted to get to at the end of 1999".

Braysher testified that the Employer's operations at the LaVergne plant will be relocated to the Employer's factory in Scottsville, Kentucky. Regarding preparations which have been made, Braysher testified that the Scottsville facility is being re-organized to create space for those operations now being performed in LaVergne.

All employees working at the LaVergne plant will be laid-off. When asked about transfers, Braysher testified that there are opportunities to offer jobs within the Scottsville operation. The Scottsville facility currently employs approximately 400 to 450 employees and is located about one hour and 40 minutes from the LaVergne plant.

There has been an approximately 50% reduction in the LaVergne workforce since a high level in March, April and May of 1998. This reduction results from reduced sales, not the transfer of work out of the LaVergne facility. Braysher proposes to maintain the LaVergne facility workforce as long as possible and anticipates a very short shutdown and transfer of equipment. It is the Employer's intention to retain employees until the phase-out is done.

Brock McCluskey (Director of Human Resources for Friction Products Group, Federal Mogul Corporation) testified that he has been involved in determining what type of severance, if any, LaVergne employees will receive at the plant's closing. McCluskey testified that they have already had some discussions about a severance package. An announcement of the severance package was intended for February 4, 1999 (the day of the hearing) or the next day. The Employer contends that it had not previously announced the LaVergne closure because of the disruption and long period of uncertainty it would cause.

In evaluating contracting units and the cessation of operations, the Board has held that a mere reduction in the number of employees is not sufficient to warrant dismissal of a petition. Rather, the Board will examine whether the reduction is a result of a fundamental change in the nature of the employer's operations. Plymouth Shoe Company, 185 NLRB 732 (1970) (the Board was persuaded that the changed nature and character of the current operations, the drastic diminution of the workforce and the radical change in the type and number of job classifications was so altered that the original unit was no longer in existence where the Employer was no longer engaged in the manufacturing of shoes and no longer employed any employees in any of the numerous job classifications involved in the manufacture of shoes or in the maintenance of shoe manufacturing equipment).

The instant case is factually similar to Cooper International, Inc., 205 NLRB 1057 (1973). Therein, the record disclosed that approximately one year prior to the date of the hearing, the employer decided to close its existing facilities and to purchase one large facility in order to accommodate its expanding volume of business. Id. at 1057. As of the time of the hearing, the employer had entered into negotiations for the purchase of a warehouse and six acres of land located approximately 18 miles from its present location. Although at that time formal papers for the purchase of the new property had not been executed, the employer anticipated that a closing date of August 1, 1973 would be established (less than two months after filing of the petition therein) and that within two weeks thereafter its operations would be completely transferred. In that case, there were 29 employees in the unit at the existing facilities, with estimates that the unit would increase to 43 after the move. The employer stated its intention to offer all employees employment at the new facility. Without attempting to ascertain the probabilities with respect to whether a substantial and representative complement of employees would accept employment at the new facility, the Board found that the imminence of the transfer of operations and the absence of evidence that a considerable proportion of the unit employees would accept employment, if offered, no useful purpose would be served by processing the petition. Id. The Board dismissed the petition without prejudice to the filing of a new petition, supported by an adequate showing of interest, when the new facility was in operation and a substantial and representative workforce was there employed. Id. at 1058. See, also, Larson Plywood Company, Inc., 223 NLRB 1161 (1976) (the Board dismissed the petition based upon imminent closure of the plant where the record indicated that the employer's officers had been directed to liquidate the entire business within 90 days, a time certain, there was

no evidence of any inconsistent action on the part of the employer, and there was no evidence that any employment relationship would survive the liquidation).

Notwithstanding the lack of physical evidence supporting the Employer's position in the instant matter, the testimonial evidence reveals that the Employer's operations will be relocated by the end of June 1999, a time certain. The Employer is presently taking steps in order to effectuate the re-location (including creating space at its Scottsville facility) and has engaged in discussions concerning a severance package for employees. Thus, I shall dismiss the petition inasmuch as no useful purpose would be served in processing same because of the imminence of the transfer of operations from LaVergne to Scottsville.

To insure the employees' statutory rights to an election, should the Employer not in fact proceed under plans to relocate its LaVergne facility forthwith, I shall reinstate the petition upon a proper showing by the Union of these changed circumstances.

CLASSIFICATION INDEX

393-6081-2050	dismissal of petition
393-6034-2800	basis for dismissal of petition
524-5060-	relocation of operations
280-7500	automotive repair, services, and garages